

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

LABORERS WELFARE FUND OF DELAWARE : CIVIL ACTION  
LOCAL NO. 199, LABORERS OF DELAWARE :  
LOCAL UNION NO. 199 PENSION PLAN, : NO. 07-CV-  
LOCAL 199 LABORERS INTERNATIONAL :  
UNION OF NORTH AMERICA ANNUITY :  
PLAN, LABORERS LOCAL 199 TRAINING :  
AND APPRENTICESHIP FUND and :  
LABORERS LOCAL 199 VACATION FUND :  
(administered through the Laborers Welfare Fund :  
of Delaware Local 199) :  
c/o GEM Group :  
650 Naamans Road, Suite 303 :  
Claymont, DE 19703 :

and

LABORERS'-EMPLOYERS' COOPERATIVE :  
EDUCATION TRUST FUNDS :  
c/o Delaware Contractors Association :  
P.O. Box 6520 :  
Wilmington, DE 19804 :  
and :

LABORERS INTERNATIONAL UNION OF :  
NORTH AMERICA, LOCAL NO. 199 AFL-CIO :  
532 South Claymont Street :  
Wilmington, DE 19801 :

Plaintiffs

v.

MADISON INDUSTRIAL SERVICES :  
TEAM, LTD. :  
2221 Sens Road :  
Laporte, Texas 77571 :  
Defendant :

**COMPLAINT**

**JURISDICTION AND VENUE**

1. This action is instituted under, and by virtue of, Sections 502 and 515 of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA"), 29 U.S.C. §§ 1132 and 1145, and Section 301 of the Labor Management Relations Act of 1947, as amended, ("LMRA"), 29 U.S.C. § 185, to collect liquidated damages owed for late fringe benefit contributions.

2. This Court has jurisdiction over this matter pursuant to Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1), and 28 U.S.C. §§ 1331 and 1337. Venue is appropriate pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), and 28 U.S.C. § 1391(b).

### **PARTIES**

3. The Plaintiffs, Laborers Welfare Fund of Delaware Local No. 199, Laborers of Delaware Local Union No. 199 Pension Plan, Local 199 Laborers International Union of North America Annuity Plan, Laborers Local 199 Training and Apprenticeship Fund, and Laborers Local 199 Vacation Fund (administered through the Laborers Welfare Fund of Delaware Local 199) ("Funds"), are jointly-administered, multi-employer benefit funds within the meaning of Section 302(c)(5) of the LMRA, 29 U.S.C. § 186(c)(5), and Sections 3(3) and 3(37)(A) of ERISA, 29 U.S.C. §§ 1002(3) and (37)(A). The Laborers-Employers Cooperative Education Trust ("LECET") is a jointly-administered, multi-employer fund within the meaning of Section 302(c)(9) of the LMRA; 29 U.S.C. § 186(c)(9). The Funds and LECET receive contributions from various employers who are obligated to make contributions thereto by virtue of their having agreed to be bound by collective bargaining agreements with Laborers International Union of North America Local 199, AFL-CIO ("Local 199") and by virtue of their having agreed to be bound by the Agreements and Declarations of Trusts that establish the Funds and LECET. The offices of the Funds and LECET are located at 650 Naamans Road, Claymont, Delaware 19703.

4. Plaintiff, Laborers International Union of North America, Local 199, AFL-CIO (“Local 199”) is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act, 29 U.S.C. § 152(5) and an employee organization within the meaning of Section 3(4) of ERISA, 29 U.S.C. § 1002(4). Its principal place of business is 532 South Claymont Street, Wilmington, Delaware, 19801. Local 199 represents employees employed in the construction industry as laborers in the State of Delaware.

5. Defendant, Madison Industrial Services Team, Ltd. (“Defendant”), is a company incorporated in the State of Texas with a principal place of business at 2221 Sens Road, Laporte, Texas 77571. At all times relevant hereto, the Defendant has been an employer engaged in an industry affecting commerce within the meaning of Section 301 of the LMRA, 29 U.S.C. § 185, and Section 152(2) of the NLRA, 29 U.S.C. § 152(2). The Defendant is also an “employer” within the meaning of Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

### **FACTUAL ALLEGATIONS**

6. At all times relevant hereto, the Defendant has agreed to be bound by the terms of a collective bargaining agreement (“Agreement”) with Local 199 which set forth, inter alia, the wages, hours and other terms and conditions of employment of laborers employed by the Defendant in the State of Delaware. Among the provisions contained in the Agreement are clauses that require Defendant to make timely contributions to the Funds on a monthly basis when members of Local 199 are employed by the Defendant, and to submit timely monthly contribution report forms to the Funds’ administrator.

7. “Timely” contributions, as referred to under the terms of the Agreement and under the Agreements and Declarations of Trust establishing the Funds means that all employee

benefit contributions must be received by the Funds on or before the fifteenth day of the month following the month in which the benefits are earned.

8. Under the terms of the Agreement and the rules of the Funds, contribution report forms, like the contributions themselves, must be received no later than the fifteenth day of the month in which the hours were worked by members of Local 199. Under the Agreement and the Agreements and Declarations of Trust establishing the Funds, all reports received after the fifteenth of the month are subjected to a ten percent liquidated damages charge.

9. The Trustees of the Funds have established a program pursuant to which they audit the books and records of employers obligated to contribute to the Funds under the terms of the Agreement in order to insure that contributory employers have made the contributions required under the terms of the Agreement and the rules of the Funds.

10. In October, 2006, the Trustees of the Funds decided to commence an audit of the books and records of the Defendant for the twelve months covering the period of October 1, 2005 through September 30, 2006 and retained the accounting firm of Belfint, Lyons & Shuman, P. A. ("Accounting Firm") to perform such audit.

11. Representatives of the Accounting Firm contacted the Defendant on October 18, 2006 to advise the Defendant that an audit would be conducted and requested various documents and records.

12. Representatives of the Defendant advised the Accounting Firm that such documents would be provided by November 2, 2006.

13. Notwithstanding its promise to provide documents and records to the Accounting Firm, no such documents and records were provided.

14. Thereafter, representatives of the Accounting Firm attempted to speak with representatives of the Defendant in order to obtain the necessary documents and records so as to begin the audit.

15. The Accounting Firm has made several efforts to contact the Defendant but the Defendant has failed and refused to respond to the Accounting Firm or supply the documents sought by the Accounting Firm, such documents being necessary for the audit of the Defendant.

### **COUNT ONE**

#### **VIOLATION OF ERISA FOR FAILURE TO PERMIT THE FUNDS TO AUDIT THE BOOKS AND RECORDS OF THE DEFENDANT**

16. Paragraphs 1 through 15 of the Complaint are re-alleged as if fully set forth herein.

17. Section 515 of ERISA, as amended, 29 U.S.C. §1145, requires every employer who is obligated to make contributions to a multi-employer plan under the terms of the plan or under the terms of a collective bargaining agreement to do so in accordance with the terms and conditions of the plan or agreement.

18. Pursuant to a policy of the Funds that requires periodic audits of contributing employers, the Trustees of the Funds elected to conduct an audit of the books and records of the Defendant in order to insure that the Defendant made all contributions to the Funds as it was obliged to do under the terms of the Agreement.

19. The refusal of the Defendant to permit the Funds, through the Auditing Firm, to audit all the Defendant's books and records so as to permit the Auditing Firm to conduct a full and complete audit is a violation of ERISA in that the Defendant has failed to adhere to the rules and terms of the Funds' benefit plans.

**COUNT TWO**

**BREACH OF CONTRACT FOR FAILURE TO PERMIT THE FUNDS TO AUDIT THE  
BOOKS AND RECORDS OF THE DEFENDANT**

20. Paragraphs 1 through 19 of the Complaint are re-alleged as if fully set forth herein.

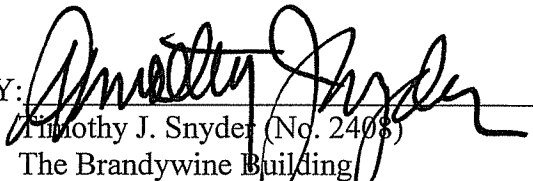
21. Under the terms of Article XXIV, Section 3 of the Agreement, the Trustees of the Funds retain the right to audit the books and records of any employer bound to the terms thereof.

22. The refusal and failure of the Defendant to permit the audit of its books and records constitutes a breach of the Agreement.

WHEREFORE, the Plaintiffs urge this Honorable Court to:

- (1) Enter an order requiring that the Defendant provide to the Auditing Firm or any other auditor employed by the Plaintiffs books and records of the Defendant necessary for Auditing Firm or any other auditor to determine whether in fact the Defendant made sufficient contributions to the Funds, as required under the terms of the Agreement;
- (2) Pay to the Plaintiffs reasonable attorneys' fees and costs involved in the litigation of this matter as well as accounting fees incurred in the audit;
- (3) Order that the Defendant pay to the Plaintiffs any monies determined due and owing the Plaintiffs that may be established during the course of this litigation; and
- (4) Grant such other relief as this Court may deem just and reasonable.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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Attorneys for Plaintiffs

Dated: March 29, 2007



JS44 (Rev. 3/99)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I.(a) PLAINTIFFS**

Laborers Welfare Fund of Delaware Local No. 199, Laborers of Delaware Local Union No. 199 Pension Plan, Local 199 Laborers International Union of North America Annuity Plan, Laborers Local 199 Training and Apprenticeship Fund, Laborers Local 199 Vacation Fund and Laborers'-Employers' Cooperative Education Trust Funds, and Laborers International Union of North America, Local No. 199 AFL-CIO

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF New Castle  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER)  
Timothy Snyder, Esquire, Young Conaway Stargatt & Taylor, LLP  
Brandywine Building, 17<sup>th</sup> Floor  
1000 West Street  
Wilmington, DE 19801  
(302) 571-6645

**DEFENDANTS**

Madison Industrial Services Team, Ltd...

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

**II. BASIS OF JURISDICTION** PLACE AN "X" IN ONE BOX ONLY

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated or Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign National	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liab. <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drugs <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (Specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) Suit brought under 29 U.S.C. Sections 301 and 1032 by Taft-Hartley Benefit Funds and Labor Organization to compel audit of books and records

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION ☐ UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ YES ☐ NO

**VIII. RELATED CASE(S)** (See Instructions): IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY  
RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE



AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

07 - 181

Civil Action No. \_\_\_\_\_

**ACKNOWLEDGMENT**  
**OF RECEIPT FOR AO FORM 85**

**NOTICE OF AVAILABILITY OF A**  
**UNITED STATES MAGISTRATE JUDGE**  
**TO EXERCISE JURISDICTION**

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

MAR-29-2007

(Date forms issued)

(Signature of Party or their Representative)

JOHN D. RITTER  
(Printed name of Party or their Representative)

**Note: Completed receipt will be filed in the Civil Action**